

REMARKS

This Amendment is in response to the Official Action dated October 3, 2002. In such Official Action, although the rule of numbering claims as set forth in 37 CFR §1.126 is stated correctly, it is not adhered to whereby the renumbering of claims in the Official Action is, beyond peradventure, in error, and unquestionably should be, and it is assumed will be, withdrawn.

By this Amendment, Claims 1, 2, 29-48 and 56 have been cancelled without prejudice, whereby the claims remaining in the Application are Claims 49-55 and new Claims 57-79.

The instant invention is directed to a feeding column for animals such as cows. The column comprises a central axis surrounded by several reservoirs and several (actually twelve) side-by-side feeding troughs. Between the reservoirs and the feeding troughs is a movable metering device for weighing feed or liquid which is delivered from at least one of the reservoirs to at least one of the feeding troughs. Each feeding trough is provided with an identification means for identifying the animal at the trough. Dairy farms are becoming increasingly automated and there is an ongoing effort to reduce manual labor and to maximize use of the facilities which can often be relatively expensive. This includes sheds usually having concrete floors wherein the dairy cattle are fed. The inventor has determined that feeding components for the dairy cows should be advantageously compact whereby the cows can eat from a feeder while being about a close together as the feeder will allow and is practicable whereby the cows while feeding take up a minimal amount of space in the shed for doing so. In this connection, it should be kept in mind that dairy cattle consume a considerable amount of food each day as well as drinking an average of 25 gallons of water each day. In feeding dairy cattle, it has long been known that it is advantageous to identify each cow and feed her the right amounts and the right

kinds of feed best for the nutritional needs of the cow. The instant invention, as indicated above, relates to a feeding column for feeding a plurality (twelve) dairy cattle at one time in conformity with their nutritional needs. A feed delivery component between the reservoirs which contain different types of feeds and the individual troughs has weighing device. Also each individual trough can have its own weighing device. The weighing component between the reservoirs and troughs is movable whereby it can adjust the weight and kind of feed each cow receives in conformity with her identification as determined by a sensor at the trough and the memory for the individual cow in a computer memory.

The columns of the invention, although sturdy, are intentionally made of different components which can be placed together without tools. This is an important aspect of the invention because it permits the dairy owner to install as well as take apart and move feeding columns as may be desirable in a timely and efficient manner.

In the Official Action, Claim 10 (correctly Claim 36 which has been replaced herein by Claim 66) was rejected under 35 U.S.C. §112 as being indefinite with the statement that the recitation that said reservoirs have similar configurations is unclear. This has been amended to indicate that the reservoirs are substantially identically which, incidentally, is also set forth in prior Claim 56, now Claim 79.

Claims 1-3, 9, 10, 13-15, 21 and 22 (as incorrectly renumbered) were rejected under 35 U.S.C. §102 as being anticipated by U.S. Patent No. 5,740,757, of Smeester, which issued April 21, 1998, and is directed to a method and apparatus for feeding animals, such as buffalo, or other animals difficult to domesticate, in a herd. For a rejection under 35 U.S.C. §102 to be valid it must disclose every element to anticipate a claim. This is not true, in particular, insofar as independent Claim 57 is concerned, wherein it is set forth specifically that the troughs must be

side-by-side. The feed stations 48, 50 and 52 in the Smeester reference are anything but side-by-side. Also the framework would appear to be more appropriately termed as rectangular rather than circular. Other differences exist, but it is clear, in any event, that a rejection of the claims involved under 35 U.S.C. §102 of any of the claims now set forth in the Application is not a valid rejection.

Several rejections under 35 U.S.C. §103 are included in the Official Action. These rejections are all flawed because they fail to disclose substantive evidence which would lead to the combinations set forth or, where only one reference is cited, there is no showing of a suggestion or motivation to modify the teachings of the reference. It has often been stated that virtually all inventions are combinations of old elements. Therefore an Examiner may often find every element of a claimed invention in the prior art. If such identification of each claimed element in the prior art were sufficient to negate patentability, very few patents would ever issue. Further, rejecting patents solely by finding prior art corollaries for the claimed elements would permit the Examiner to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention. To counter this potential weakness in the obviousness construct, the suggestion to combine requirement stands out as a critical safeguard against hindsight analysis and rote application of the legal test for obviousness.

Concerning the statement on page 4 of the Official Action that constructing a formerly integral structure in various elements involves only routine skill in the art is contrary to many patents directed to inventions specifically for so doing. An example which is often seen is a dwelling or house which is frequently integral constructed of prefabricated units which are in sizes which are movable along highways. Designing such prefabricated units is simple only to

those who have not tried to do it. There are many differences between monolithic and prefabricated or modular components that are not appreciated until tried. The inventor's concept in the instant Application of having parts which are detachable from each other without tools appears to be novel in the art of providing feeding structures for dairy cattle and nothing has been cited from the prior art to indicate differently. The statutory provision for obviousness is 35 U.S.C. §103 and in applying same to new inventions the totality of the inventions must be considered.

There is no question but that the use of identification means to determine the kinds and types of feed and drink that an animal should receive has been known and used in dairy farms for a number of years. The result of providing healthier animals was not, of course, unexpected. However, the circumstance that less feed was actually required for this purpose was surprising. The concept is a continuing evolving one. Incidentally, in the present case, the weighing means is on the intermediate component between the reservoirs and troughs which component is movable. Thus taking into account the invention as a whole, it is not, in fact, taught by the prior art as such. The patent to Wojeik, No. 4,361,990, which issued November 30, 1982, seems, on its face, inapt and hardly analogous. It relates to a process for separating and recovering fat and proteinaceous material from raw organic material, actually material that comes from a slaughterhouse. It is true that an electromagnet is used to separate tramp metal from a combination of materials as part of a process before the materials are received by a crusher. In the instant invention, the magnetic removal of materials takes place just before the feed or fodder is provided to the troughs where it is consumed by dairy cattle. There is nothing in the Wojeik patent to suggest this procedure.

It is submitted that the rejections under the judicially created Doctrine of Double Patenting based on the van den berg U.S. Patent No. 6,371,047, which issued April 16, 2002, is misplaced and, at best, constitute hindsight second guessing. The van den Berg reference shows a weighing device which is selectively applied to different feeding troughs and the claims of the patent reflect this concept. More than one-half of Claim 1 of the reference relates to the weighing device for weighing the amount of substances provided by the apparatus wherein the weighing device is provided with at least one movable weighing unit for selectively weighing said troughs. The same is true for independent Claims 5, 6 and 7. Method Claim 12 includes the step of automatically moving a weighing unit towards the relevant trough with the instant invention in the instant Application.

More importantly, it should be kept in mind that the instant invention is directed principally to a framework which is located around a central axis which is not disclosed, as such, in the van den Berg reference. Although it is possible that perhaps some of the claims in the van den Berg reference might be included in the instant Application, it is quite questionable with the claims as presently set forth that the reverse is true. Accordingly, it is submitted that this is not a situation where the judicial Doctrine of Double Patenting applies or where claims herein, considered as a whole or individually, might have been earlier claimed in the van den Berg reference.

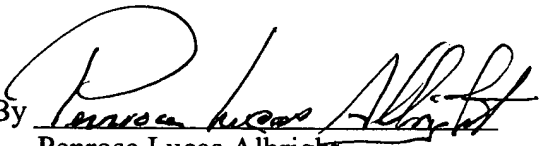
Further consideration and reexamination of this Application, in its amended form, is requested in view of 35 U.S.C. §132 and regulations in implementation thereof. It is submitted the Application in its amended form is free from ambiguity and avoids the references of record. It is further submitted the Examiner should have no difficulty in finding that the differences between the subject matter sought to be patented in this Application and prior art and usage

within his expert knowledge are such that the subject matter as a whole would not have been obvious at the time the invention was made to persons having ordinary skill in the art to which the subject matter of this Application pertains.

In view of the foregoing, the allowance of claims as now presented is earnestly solicited.

Respectfully submitted,

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Filed: April 3, 2003